United Nations ST/IC/2007/47

Secretariat

31 August 2007

Information circular*

To: Members of the staff

From: The Under-Secretary-General for Management

Subject: **Practice of the Secretary-General in disciplinary matters and cases of criminal behaviour, 1 July 2006-30 June 2007**

1. The purpose of the present circular[1] is to inform staff members of the practice of the Secretary-General in exercising his authority in disciplinary matters under article X of the United Nations Staff Regulations, and to implement paragraph 17 of resolution 59/287, in which the General Assembly requested the Secretary-General to ensure that all staff of the Organization are informed of the most common examples of misconduct and/or criminal behaviour and their disciplinary consequences, including any legal action, with due regard to the protection of the privacy of the staff member(s) concerned. This circular covers the period from 1 July 2006 through 30 June 2007.

I. Overview of administrative machinery in disciplinary matters

A. Rules governing the conduct of staff members[2]

2. Article 101, paragraph 3, of the Charter of the United Nations states that the "paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and *integrity*" (emphasis added).

3. Article I of the Staff Regulations and chapter I of the Staff Rules, both entitled "Duties, obligations and privileges", set out the basic values expected of international civil servants because of their status, as well as particular

* The present circular will be in effect until further notice.

[1] Previous circulars covering the period from January 2000 to June 2006 were issued as ST/IC/2002/25, ST/IC/2004/28, ST/IC/2005/51 and ST/IC/2006/48.

[2] For a full overview of relevant provisions, see Secretary-General's bulletin ST/SGB/2002/13, "Status, basic rights and duties of United Nations staff members", issued at the request of the General Assembly. Provisions relating to the status, rights and obligations of staff members, and to disciplinary matters, can also be found in the electronic Human Resources Handbook under "Status, basic rights and duties" and "Disciplinary".

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manifestations of such basic values. Particular reference is made to staff regulation 1.2 and staff rule 101.2 for specific instances of expected or prohibited conduct.

B. Misconduct

4. Article X of the Staff Regulations, entitled "Disciplinary measures", provides in regulation 10.2 that "the Secretary-General may impose disciplinary measures on staff members whose conduct is unsatisfactory". Staff rule 110.1, on misconduct, provides that "failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances, or to observe the standards of conduct expected of an international civil servant, may amount to unsatisfactory conduct ... leading to the institution of disciplinary proceedings and the imposition of disciplinary measures for misconduct". Similarly, staff rule 101.2 (a) provides that "disciplinary procedures ... may be instituted against a staff member who fails to comply with his or her obligations and the standards of conduct set out in the Charter of the United Nations, the Staff Regulations and Rules, the Financial Regulations and Rules, and all administrative issuances". Within these parameters, the Secretary-General has broad discretion in determining what constitutes misconduct and in imposing disciplinary measures. Administrative instruction ST/AI/371, on revised disciplinary measures and procedures,[3] provides several examples of conduct for which disciplinary measures may be imposed.

C. Due process

5. Where the head of office or responsible officer believes, on the basis of an investigation, that disciplinary procedures may be warranted, he or she refers the matter to the Assistant Secretary-General for Human Resources Management for a decision on whether to pursue the matter as a disciplinary case.[4] During the period reported on, preliminary investigations were undertaken by the head of office or his/her designees, or by the Office of Internal Oversight Services, at its own initiative, or at the request of the head of office.

6. If the Assistant Secretary-General for Human Resources Management decides to pursue the matter as a disciplinary case, the first step is to notify the staff member in writing of the allegations as well as of his or her right to seek the assistance of counsel. The staff member is given a reasonable opportunity to respond to the allegations. In the light of the comments provided by the staff member, it is decided whether to close the case, to refer it to a Joint Disciplinary Committee for advice or to summarily dismiss the staff member.

7. The Secretary-General has broad discretionary authority in deciding upon an appropriate measure in each case. In most cases, the decision is taken on advice of a Joint Disciplinary Committee as to what measures, if any, are appropriate. However, in cases of serious misconduct, staff members may be summarily dismissed without

[3] See the electronic Human Resources Handbook referred to in footnote 2 above. Also relevant is administrative instruction ST/AI/379 on procedures for dealing with sexual harassment.

[4] The head of administration in a mission refers the case to the Department of Peacekeeping Operations, Personnel Management and Support Service, at Headquarters, which refers the matter to the Office of Human Resources Management if it concurs with the mission.

prior consideration by a Joint Disciplinary Committee, and would then have the right to request review by a Joint Disciplinary Committee afterwards. Referral to a Joint Disciplinary Committee may also be waived by the staff member concerned. All staff members subjected to disciplinary measures ultimately have recourse to the United Nations Administrative Tribunal.[5]

D. Disciplinary measures

8. Staff rule 110.3 provides that disciplinary measures can take one or more of the following forms (i.e., more than one measure can be imposed in each case):

(a) Written censure by the Secretary-General;

(b) Loss of one or more steps in grade;

(c) Deferment, for a specified period, of eligibility for within-grade increment;

(d) Suspension without pay;

(e) Fine;

(f) Demotion;

(g) Separation from service, with or without notice or compensation in lieu thereof;

(h) Summary dismissal.

9. In determining the appropriate measure, every case is decided on its own merits, taking into account the particulars of the case, including aggravating and extenuating circumstances.

E. Other measures

10. Reprimands, written or oral, by a supervisory official are not considered disciplinary measures. Like warnings or letters of caution, they are administrative/managerial, not disciplinary measures. However, they are also important measures to uphold standards of proper conduct and to promote accountability. Where inappropriate behaviour affects performance, the issue is addressed in the context of performance management. This may include training, counselling, withholding of salary increments, non-renewal of contract or termination of appointment.

II. Summary of cases for which the Secretary-General imposed a disciplinary measure during the period from 1 July 2006 to 30 June 2007

11. For each case that led to the imposition of one or more disciplinary measures, a summary is provided below, indicating the nature of the misconduct and the

[5] Numerous judgements of the United Nations Administrative Tribunal relate to disciplinary measures and show the practice of the Secretary-General for those cases brought before the Tribunal. Digests of these can be found online on the Department of Management iSeek Intranet home page (see "Case and Jurisprudence Digest of UN Administrative Tribunal Judgements").

disciplinary measure(s) imposed by the Secretary-General. The function or other particulars of the staff member are provided only when these played a role as aggravating circumstances in determining the measures to be taken. Conduct issues that were dealt with by means other than disciplinary measures are not listed.

12. Not every case brought to the attention of the Secretary-General results in disciplinary or other measures being taken. When a review by the Office of Human Resources Management reveals that there is not sufficient evidence to pursue a matter as a disciplinary case or when a staff member provides a satisfactory explanation in response to allegations, the case is closed and the staff member considered cleared of the allegations. Cases may also be closed when a staff member retires or is otherwise separated from the Organization before disciplinary proceedings are concluded, as the Secretary-General does not have the authority to impose disciplinary measures on former staff members. In such cases, a record is made and placed in the official status file.

A. Abuse of authority/harassment

13. A staff member verbally harassed and physically assaulted a colleague. *Disposition*: fine of six months net base salary; written censure. The staff member was also required to undertake counselling after the advice of a Joint Disciplinary Committee.

14. A staff member became publicly intoxicated and harassed a female staff member. *Disposition*: written censure after waiver of referral to a Joint Disciplinary Committee.

B. Fraud/misrepresentation

15. A staff member altered a signed list of applicants for a vacant post, thereby improperly influencing the recruitment process. *Disposition*: separation from service after the advice of a Joint Disciplinary Committee.

16. A staff member submitted a claim for education grant for a child which contained incorrect information. The staff member had relied on information provided by the child without making independent inquiries concerning its accuracy. *Disposition*: written censure after waiver of referral to the Joint Disciplinary Committee.

17. A staff member knowingly misrepresented his academic credentials on Personal History Profile form submitted to the Administration. *Disposition*: separation from service after the advice of a Joint Disciplinary Committee.

18. A staff member provided another staff member with a United Nations medical certificate to assist the latter to forge medical certificates which would be used by other staff to facilitate their participation in the United Nations Inter-Agency Games. *Disposition*: written censure after waiver of referral to the Joint Disciplinary Committee.

19. A staff member submitted seven forged medical certificates to facilitate the participation of seven staff members in the United Nations Inter-Agency Games.

Disposition: written censure after waiver of referral to the Joint Disciplinary Committee.

C. Theft/misappropriation

20. A staff member attempted to steal a quantity of truck tyre inner tubes from a United Nations vehicle repair facility. *Disposition*: written censure; payment of a fine in the amount of $200; and loss of one step within grade after waiver of referral to the Joint Disciplinary Committee.

21. A staff member diverted fuel from a United Nations tank truck to sell on the black market. When apprehended, he attempted to bribe a local policeman. *Disposition*: summary dismissal.

22. A staff member attempted to steal property on United Nations premises. *Disposition*: written censure; loss of one step within grade; one-year deferral for within-grade salary increment after waiver of referral to the Joint Disciplinary Committee.

23. A staff member misappropriated $1,159.00 of the Organization's funds. *Disposition*: separation from service after the advice of a Joint Disciplinary Committee.

24. A staff member engaged in fraud, over a period of three years, by accessing for personal use United Nations vehicles using an identity other than his own. *Disposition*: summary dismissal.

25. A staff member mismanaged various United Nations construction projects, failed to exercise proper control over subordinates, unnecessarily inflated contract estimates, and solicited and accepted a bribe from a local contractor. *Disposition*: separation from service, after the advice of a Joint Disciplinary Committee.

26. A staff member failed to return or account for within the required time frame unused monies advanced to the staff member for disbursement to others. *Disposition*: written censure after waiver of referral to the Joint Disciplinary Committee.

D. Sexual exploitation and sexual abuse

27. A staff member engaged in consensual sexual relations with a local woman in the mission area and gave money to her afterwards for expenses. *Disposition*: written censure after the advice of a Joint Disciplinary Committee.

28. A staff member engaged in sexual exploitation, sexual abuse and sexual harassment of staff members and United Nations Volunteers. The staff member also engaged in abuse of authority by seeking favours and personal benefits from staff members and United Nations Volunteers in exchange for performing official acts, and by seeking to exchange employment or services for sexual favours. *Disposition*: summary dismissal.

29. A staff member used a United Nations computer to send and to receive pornographic video clips and photographs. The staff member also solicited and paid for sexual favours from local women in a mission area. The staff member further

took pornographic photographs of local women, which photographs later became public. *Disposition*: separation from service after the advice of a Joint Disciplinary Committee.

E. Computer-related misconduct

30. A staff member received and widely distributed pornographic video clips and photographs using a United Nations computer. *Disposition*: demotion of one grade with no possibility of promotion for three years after waiver of referral to the Joint Disciplinary Committee.

31. A staff member received and distributed pornographic video clips and photographs using a United Nations computer. *Disposition*: loss of three steps in grade; three-year deferral for within-grade salary increment after waiver of referral to the Joint Disciplinary Committee.

32. A staff member received and distributed pornographic video clips and photographs using a United Nations computer. *Disposition*: loss of three steps in grade; three-year deferral for within-grade salary increment after waiver of referral to the Joint Disciplinary Committee.

33. A staff member received and stored pornographic video clips and photographs using a United Nations computer. *Disposition*: loss of two steps in grade; two-year deferral for within-grade salary increment after waiver of referral to the Joint Disciplinary Committee.

34. A staff member received and stored pornographic video clips and photographs using a United Nations computer. *Disposition*: loss of two steps in grade; two-year deferral for within-grade salary increment after waiver of referral to the Joint Disciplinary Committee.

35. A staff member working in information technology used a password to gain unauthorized access to the United Nations e-mail account of another staff member and read that staff member's e-mail messages. *Disposition*: written censure; loss of two steps within-grade increment; one-year deferral of eligibility for within-grade increment after waiver of referral to the Joint Disciplinary Committee.

36. A staff member accessed for over a period of 16 months pornographic material using a United Nations computer. *Disposition*: loss of two steps within-grade and three-year deferral for within-grade salary increment after waiver of referral to the Joint Disciplinary Committee.

37. A staff member accessed a colleague's United Nations e-mail account, copied the colleague's private note and sent it to the colleague's supervisors. At the time of the unauthorized access, both staff members were competing for the same post. *Disposition*: demotion with no eligibility for promotion for three years and fine in the amount of one month's salary after the advice of a Joint Disciplinary Committee.

F. Conflict of interest

38. A staff member engaged in a conflict of interest in connection with a recruitment process. The staff member also acted in an insubordinate and

obstructive manner during the investigation into the matter. *Disposition*: written censure after waiver of referral to the Joint Disciplinary Committee.

39. A staff member working in the procurement area engaged in a conflict of interest by entering into a commercial arrangement with representatives of a United Nations vendor. *Disposition*: summary dismissal.

III. Criminal behaviour

40. Resolution 59/287 requests the Secretary-General to take action expeditiously in cases of "proven ... criminal behaviour" and ensure that all staff of the Organization are informed about the actions taken. The Office of Legal Affairs has advised that criminal behaviour of staff members can be established only by competent authorities of Member States, in accordance with their criminal procedures. That office is aware of two cases during the reporting period where United Nations staff members have been subject to criminal proceedings by competent national authorities of Member States:

(a) A staff member was indicted and arrested for the criminal offence of smuggling a narcotic substance (khat) via use of the diplomatic pouch. The staff member entered a guilty plea for possession of a controlled substance. The staff member is awaiting sentencing;

(b) A former staff member, who had been summarily dismissed for misconduct, was indicted, tried and found guilty of mail and wire fraud, conspiracy and corruption. That individual is awaiting sentencing.